

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

BRAINCHILD SURGICAL DEVICES,)
LLC,)
))
Plaintiff,))
))
v.) Civil Action No. 1:21-cv-0554 (RDA/LRV)
))
CPA GLOBAL LIMITED,))
))
Defendant.))

ORDER

This matter comes before the Court on Defendant CPA Global Limited's Motion to Compel Plaintiff to Produce Documents from Its Testifying Expert John Keogh (Dkt. No. 132). Defendant's Motion is fully briefed (*see* Dkt. Nos. 133, 139, 141), and a telephonic hearing was held on the Motion on July 14, 2023, at which counsel for both parties was present. Defendant's Motion seeks to compel documents responsive to its Requests for Production to John Keogh (Dkt. No. 133-3 at 6), Request Nos. 9-11 and 15-19, and "any other documents considered by Mr. Keogh in formulating his opinions," contained in the May 8, 2023 Expert Report of Mr. Keogh (Dkt. No. 132-1.) Plaintiff opposes Defendant's Motion in its entirety and, as to the "CPA invoices" requested by Defendant and referenced in the May 8 Expert Report of John Keogh (Dkt. No. 133-2), Mr. Keogh has stated in a declaration that "RenewalsDesk does not keep track of what provider (e.g., CPA Global) clients have used prior to RenewalsDesk *or retain their pre-RenewalsDesk invoices.*" (Dkt. No. 139-1 ¶ 6 (emphasis added).) For reasons stated from the bench, and in accord with specific rulings and instructions thereto, it is hereby

ORDERED that Defendant's Motion (Dkt. No. 132) is **GRANTED IN PART**. Pursuant to

Federal Rule of Civil Procedure 26(a)(2)(B)(ii), the Court finds Defendant CPA Global is entitled to information responsive to Defendant's RFP Nos. 10, 11, and 18; however, as represented by Mr. Keogh in his Declaration (Dkt. No. 139-1 ¶ 6) and by Plaintiff's counsel at the July 14 hearing, the Court understands that any such responsive documents and information are not readily available or may no longer exist, and, thus, cannot be produced by Plaintiff to Defendant. Accordingly, it is further

ORDERED that, pursuant to Federal Rule of Civil Procedure 37(c)(1)(C), the following portions of the May 8, 2023 Expert Report of John Keogh are hereby stricken:

- The section of Paragraph 8 that begins with "In addition, RenewalsDesk would acquire clients from CPA . . ." and ends with "shown to me in evidence in this matter."
- The second sentence of Paragraph 32.
- The entirety of Paragraphs 42 and 43.

Plaintiff is **DIRECTED** to serve a revised copy of the May 8 Expert Report of John Keogh that omits those portions of the Report by 5 pm ET on July 18, 2023; it is further
ORDERED that Defendant's Motion is **DENIED** in all other respects.

ENTERED this 14th day of July, 2023.


/s/
Lindsey Robinson Vaala
United States Magistrate Judge

Lindsey Robinson Vaala
United States Magistrate Judge

Alexandria, Virginia